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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 1011

ARTHUR MATTSON,

Appellant,

vs.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON.

STATEMENT AS TO JURISDICTION PURSUANT TO RULE 12 (1).

The appellant in support of the jurisdiction of the Supreme Court of the United States to review the above entitled cause on appeal respectfully presents:

A.

Statutory Provision Believed to Sustain Jurisdiction.

The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States is Judicial Code section 237 (a) (United States Code, Title 28, section

344) (Act of February 13, 1925, Chapter 229, 43 Stat. 936. Effective May 13, 1925), which is, to the extent here relevant:

> "SEC. 237 (a). A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

The remedy by writ of error under the foregoing section has been abolished and an appeal substituted. Act of January 31, 1928, as amended by the act of April 26, 1928 (45 Stat. 54) (45 Stat. 466). (United States Code, Title 28, sections 861 (a) and 861 (b).)

B.

The Statute of the State of Washington, the Validity of Which is Involved.

The validity of a statute of the State of Washington is involved. It is subdivision (h), section 4, chapter 310, Laws of 1927 (State of Washington Session Laws of 1927, pages 844-845). The pertinent provisions thereof are:

> "(h) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation terminated, in any case the director

of labor and industries, through and by means of the division of industrial insurance, may, upon the application of the beneficiary, made within three years after the establishment or termination of such compensation, or upon his own motion, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same or in a proper case terminate the payment: Provided, any such applicant whose compensation has heretofore been established or terminated shall have three years from the taking effect of this act within which to apply for such readjustment."

This amended subdivision (h), section 2, chapter 136, Laws of 1923 (State of Washington Session Laws 1923, page 397), which was in force at the time of the occurrence of the injury in question and contained no such limitation and granted compensation for any increase in the disability occurring at any time.

C.

Date of Judgment Sought to be Reviewed and Date Upon Which Application for Appeal is Presented.

The date of the final judgment of the Supreme Court of the State of Washington sought to be reviewed is March 1, 1934. The judgment of the Supreme Court of the State of Washington, which was a final judgment effecting a dismissal of this action, is a final judgment within the meaning of Judicial Code section 237. The time for the taking of the appeal began to run from the day of the final judgment, to-wit, March 1, 1934. (See *Puget Sound Power & Light Co.* v. *King County*, 264 U. S. 22, where the time for appealing from the judgment of the Supreme Court of the State of Washington is considered.) The date on which the application for appeal was presented and the appeal allowed is March 7th, 1934.

D.

The Nature of the Case and the Rulings Below.

The nature of the case and the rulings below which are deemed to bring the case within the jurisdictional provision relied on are as follows:

The appellant, Arthur Mattson, was injured in the month of February, 1927, in employment covered by the industrial insurance act of this State and lodged a claim therefor with the industrial insurance division of the department of labor and industries, the administrative tribunal charged with the administration of that law, which claim was allowed and compensation paid and the claim closed on the 17th day of January, 1928.

At that time the statute authorized additional compensation for any increase in the disability resulting from the injury whenever it occurred. That was amended by the statute, the validity of which is questioned by this appeal, and compensation only allowed by the amendment in case the disability increased within three years after the closing of the claim. On May 10, 1933, the appellant applied to the department of labor and industries for a reopening of his claim on the ground that his disability had substantially increased since the claim was closed in that since his claim was closed his arm had become perfectly useless and required further medical treatment, which application was denied by the supervisor of industrial insurance, from which, in the manner provided by law, chapter 90 of the Washington Session Laws of 1931, pages 263 to 268, appellant petitioned for a review of said order before the joint board of the department of labor and industries which was denied on the ground that the statute, the validity of which is herein questioned, barred his right of recovery, from which order appellant appealed to the

Superior Court of the State of Washington for Thurston County in the manner provided by chapter 90 of the Session Laws of 1931 (1931 Wash. Session Laws, pp. 263-268).

The amended petition for rehearing, which, under said chapter, takes the place and performs the office of a declaration or complaint, alleged that the statute was invalid *inter alia* upon the following grounds: that it impairs the obligation of the contract of employment entered into between the claimant and his employer and the contract between the claimant and his employer on the one hand and the State of Washington on the other to pay the compensation provided by the law in force at the time of the injury, in violation of section 10 of article 1 of the Constitution of the United States of America; and that it deprived appellant of full compensation authorized by law at the time of the injury, the right to which is vested at the very moment of the injury, in violation of the appellant's right under the due process clause and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States of America.

The sole question submitted to the trial court was whether or not those rights of the appellant guaranteed under the specified provisions of the Constitution of the United States of America were violated by the statute in question, passed after the occurrence of the injury and his right to recover full compensation under the existing law had become vested. The Supreme Court of the State of Washington stated the questions it decided in this language, *Mattson* v. *Department of Labor and Industries*, 76 Wash. Dec. 255, 256:

> "The appellant contends that the law as it existed at the time of the injury is a part of the contract, and therefore that the amendment of 1927 impairs appellant's contractual rights in violation of section 10, Article I of the Federal constitution, and that it also im-

pairs the vested right of appellant to recover full compensation authorized by the statute in force at the time of the injury, thus violating the due process and the equal protection clauses of the fourteenth amendment to the Federal constitution and similar provisions of our state constitution."

On the 18th day of August, the court entered appropriate findings of fact and conclusions of law and a judgment dismissing the appeal, completely denying appellant any relief and finally and completely terminating the action.

Thereafter and within the time limited by law, appellant appealed from said judgment to the Supreme Court of the State of Washington, where the judgment of the trial court was completely affirmed in an opinion filed by the Supreme Court of the State of Washington on the 2d day of February, 1934, and reported in Volume 76 of the Washington Decisions on page 255. That thereafter and within the time limited by law, appellant applied for a rehearing in the Supreme Court of the State of Washington which was denied on the 1st day of March, 1934, and the final judgment of the Supreme Court of the State of Washington was entered on that day.

Cases Believed to Sustain the Jurisdiction of this Court.

The following cases are believed to sustain the jurisdiction of this Court, in which it was decided that where the State court does not decide against the (plaintiff in error) appellant on an independent State ground, but deems a Federal question before it, actually entertains it and decides it adversely to the Federal right asserted, the Supreme Court has jurisdiction:

Hancock National Bank v. *Farnum*, 176 U. S. 640, 642;
San Jose Land and Water Co. v. *San Jose Ranch Co.*, 189 U. S. 177, 179, 180;
American Express Co. v. *Mullin*, 212 U. S. 311, 313;

Atchison, Topeka & Santa Fe Ry. Co. v. *Sauers,* 213 U. S. 55, 63;
Miedreich v. *Lauenstein,* 232 U. S. 236, 243;
North Carolina Ry. Co. v. *Zachery,* 232 U. S. 248;
Mallinckrodt Chemical Works v. *Missouri,* 238 U. S. 41, 49;
Rogers v. *Hennepin County,* 240 U. S. 184.

We respectfully submit that the Supreme Court of the United States has jurisdiction of this appeal by virtue of section 237 of the Judicial Code, as amended by the act of February 13, 1925, United States Code, Title 28, section 344.

Respectfully submitted,

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(4963-C)